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John Doe 70.109.224.221.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ON THE CHEAP, LLC, a California  
Corporation, doing business as  
Tru Filth, LLC

Plaintiff,

v.

Does 1-5011,

Defendant(s).

Case No. CV 10-04472 BZ

**Memorandum Of Points And Authorities Of  
John Doe, I.P. Address 70.109.224.221 In  
Support Of Motion To Quash Subpoena  
Pursuant to Fed. R. Civ. P. 45(c)(3)**

**JUDGE: BERNARD ZIMMERMAN,**  
United States Magistrate Judge

**Date and Time:** September 7, 2011 at  
10:00 am

**Courtroom:** C – 15th Floor

PLEASE TAKE NOTICE that the Date and Time for Hearing on this Motion of John Doe  
70.109.224.221 To Quash Subpoena is as follows: September 7, 2011 at 10:00 am.

Movant John Doe, identified by the I.P. Address No. 70.109.224.221, (hereinafter “John  
Doe 70.109.224.221”), through his attorney, Edwards Angell Palmer & Dodge LLP, moves this  
Honorable Court to quash the portion of the subpoena dated March 22, 2011 directing Verizon  
Internet Services, an internet service provider, to produce John Doe’s identifying information on

the grounds of the lack of personal jurisdiction. This Motion and Supporting Memorandum of Points and Authorities is submitted on behalf of John Doe 70.109.224.221 only.

In support of this motion, Movant directs the Court's attention to the following Memorandum of Points and Authorities.

### **MEMORANDUM OF POINTS AND AUTHORITIES**

#### **I. Defendant John Doe's Objection to the Subpoena is Timely**

Movant received a letter from his internet service provider Verizon Online ("Verizon") dated June 30, 2011, a redacted copy of which is attached as Exhibit A to the contemporaneously filed Motion to Quash. The letter identified Movant's IP address as 70.109.224.221 and advised Movant that he had 30 days to object to the production of his personal information. This motion to quash is therefore timely filed.

#### **II. The Court Should Quash The Subpoena Because The Northern District of California Lacks Personal Jurisdiction Over Movant John Doe 70.109.224.221.**

There is an insufficient relationship between Plaintiff's claim and Movant's contacts with California to justify the court's exercise of jurisdiction over him. Due process requires that a defendant be sued in a jurisdiction where the Court has personal jurisdiction over that defendant. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980). Jurisdiction over a defendant may be general or specific in nature. Specific jurisdiction may exist only when defendant has purposefully availed himself of the benefit of the jurisdiction through contacts with the forum. Id.

Plaintiff has not alleged any direct contact between the Movant and this jurisdiction. Instead, the complaint merely contains the following general allegation of jurisdiction: "[a]lthough the true identity of each individual Defendant is unknown to the Plaintiff at this time, on information and belief, each Defendant may be found in this District, and/or the acts complained of herein occurred and/or have a significant effect within this District." First Amended Complaint, Doc. No. 7, p. 2, ¶2. Such "general internet jurisdiction" has been rejected. See Cybersell, Inc. v. Cybersell, Inc., 130 F.3d 414, 420 (9th Cir. 1997) (affirming the trial court's dismissal for lack of personal jurisdiction when the defendant "engaged in no commercial

1 activity and had no other contacts via the Internet or otherwise in" the forum state); see also,  
 2 uBid, Inc. v. The GoDaddy Group, Inc., 623 F.3d 421 (7th Cir. 2010) ("The plaintiff must still  
 3 prove that the defendant had constitutionally sufficient contacts with the forum and that the  
 4 defendant's contacts were temporally and substantively related to the lawsuit. Without that  
 5 showing, the mere fact that the defendant allegedly caused harm by conducting business or  
 6 advertising over the Internet is not adequate to establish jurisdiction in the plaintiff's chosen  
 7 forum state."); GTE New Media Services Inc. v. BellSouth Corp., 199 F.3d 1343, 1350 (D.D.C.  
 8 2000).

9 The constitutional standard is whether the defendant had certain minimum contacts with  
 10 the forum such that the maintenance of the suit does not offend "traditional notions of fair play  
 11 and substantial justice." International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). As  
 12 attested by the Declaration of John Doe, I.P. Address 70.109.224.221, In Support Of Motion To  
 13 Quash Subpoena, the IP address listed for the Movant is not within the jurisdiction of this Court  
 14 and neither is Movant. Further, Movant has no other significant relationship with this forum. It  
 15 is improper and against the traditional notions of fair play and substantial justice for Movant to be  
 16 subjected to this lawsuit in this jurisdiction. It is also improper for Verizon to be required to turn  
 17 over Movant's identifying information to Plaintiff.

18 Accordingly, for all these reasons, Movant John Doe identified through IP Address  
 19 70.109.224.221 requests the Court issue an order quashing the portion of the subpoena directed to  
 20 Verizon relating to the IP address 70.109.224.221.

21  
 22  
 23 Dated: July 29, 2011

Respectfully submitted,

Edwards Angell Palmer & Dodge LLP

24  
 25 By: 

26 Jon-Paul Lapointe  
 27 Attorney for Movant  
 28 John Doe 70.109.224.221